

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

RAYMOND DELEON MARTINEZ,
TDCJ#00000768

Petitioner,

VS.

Case No. -----

THIS IS A DEATH CASE

BRAD LIVINGSTON,
Respondent,

MOTION FOR APPOINTMENT OF COUNSEL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Movant in the above and styled cause, by and through his attorney of record and offers this Motion for Appointment of Counsel in a Habeas Death Case pursuant to 18 U.S.C. 3006 (a). He would show this Honorable Court the following:

- 1) Mr. Martinez was convicted of capital murder and sentenced to death in the 184th District Court of Harris County in 1989.
- 2) On retrial, his direct appeal was affirmed on 12/15/10. The Court of Criminal Appeals denied his state writ on 6/26/13.
- 3) Mr. Martinez has been indigent for the entire time of his charges and trial and appeals. He is without assets of any kind to the best of counsel's knowledge.
- 4) The undersigned counsel has been assigned to represent Mr. Martinez on his state post-conviction proceedings. However, since the decision in *Trevino v. Thaler* 133 S.Ct. 524 (2012), the undersigned counsel believes it is his ethical duty to seek appointment of separate counsel as any mistakes made by state habeas counsel may form a "gateway" through which one can bypass procedural default rules. See *Trevino v. Thaler* 133 S.Ct. 524 (2012). See also *Martinez v. Ryan* 132 S.Ct. 1309 (2012).
- 5) Counsel thus believes that he cannot ethically go forward on this matter and thus be in a position where he would be forced to investigate his own potential failure to provide

effective assistance. Accordingly the undersigned counsel, per his statutory duty under the Texas Rules of Criminal Procedure requests that this Honorable Court appoint a skilled habeas attorney to investigate and determine what claims may be brought forward on Mr. Martinez's behalf.

FOR THESE REASONS, the undersigned counsel, on behalf of Mr. Martinez, respectfully moves that this Honorable Court appoint counsel to represent him in federal post-conviction proceedings pursuant to 21 U.S.C. Sec. 848(q).

Respectfully submitted,

/s/ Patrick F. McCann
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CERTIFICATE OF SERVICE

I hereby certify I have forwarded a copy of this motion to the Asst. Attorney General on this matter at the Attorney General's Office, at the address listed on her correspondence and pleadings, via first class mail on July 9th, 2013.

/s/ Patrick F. McCann
Counsel